

11 December 2002

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

1. Purpose: This document provides formal evaluation and coordination procedures and policies for cut and fill placement proposals on Corps of Engineers (CE) fee or flowage easement lands within the Nashville District. This coordination facilitates compliance with the Clean Water Act, Rivers and Harbors Act, National Environmental Policy Act (NEPA), National Historic Preservation Act, Executive Order 11988, and Executive Order 11990 requirements. This policy supercedes all other current policies and regulations regarding this subject. These internal review procedures and policies have been developed and approved by an interdisciplinary team represented by Project Planning Branch (PM-P), Hydrology & Hydraulics Branch (EC-H), Geotechnical Branch (EC-G), Cost Engineering & Management (EC-A), Regulatory Branch (OP-F), Natural Resources Management Branch (OP-R), Office of Counsel (OC), and Management & Disposal Branch (RE-M) and are effective immediately.

2. References.

- a. ER 405-1-12.
- b. Memorandum, CECE-PA, 28 April 93, subject: Policy Guidance Letter No. 32, Use of Corps Reservoir Flowage Easement Lands.
- c. Executive Order 11988 (Floodplain).
- d. Executive Order 11990 (Wetlands).
- e. National Historic Preservation Act.
- f. Section 404, Clean Water Act.
- g. Section 10, Rivers and Harbors Act of 1899.
- h. National Environmental Policy Act (NEPA).

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

i. ER 200-2-2.

j. CELRN-CO-T-N Standing Operating Procedure for Processing Major Outgrants, 28 Nov 98.

k. Memorandum, CEORN-CO-F, 26 Aug 94, subject: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineer Lakes.

1. Standing Operating Procedure (SOP), Mitigation Policy for Issuing Real Estate Outgrants, 13 Aug 02.

3. Applicability. These guidelines apply to fill placed on all properties, including work undertaken by the CE, where sufficient rights are vested in the United States to permit and protect operations of lake and reservoir projects for one or all of the reasons of flood storage, navigation and electrical power generation, including but not limited to, fee simple estates, flowage easements, use permits from other federal agencies, etc., except fill necessary for routine maintenance such as sand replenishment of beaches, bank stabilization, etc. These guidelines do not apply to excavation/dredging activities that are approved under regulatory permits and/or real estate regulations provided all materials are removed out of the flood control pool or surcharge pool. These guidelines do not change existing policy or environmental requirements involving wetlands, cultural resources, endangered species, water quality, hazardous materials, etc.

4. All initial requests for cut and fill placement proposals should be submitted in writing to the appropriate Resource Manager. Initial requests received in the District Office will be forwarded by the receiving office to the appropriate Resource Manager and the applicant notified of such. The District Office will take no action on the request until it has been recommended by the Resource Manager and submitted to OP-R for distribution.

5. Resource Managers will give careful consideration to proposals that involve cuts or fill. The goal is to ensure

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

compliance with all applicable laws, executive orders, and CE policies, and to minimize, to the greatest extent practicable, actions that individually or cumulatively displace project storage capacity, cause instability concerns, or adversely affect the environment. Such actions could include cuts and/or fill placement for parking lot expansions, roadways, structures, new or expanded facilities, etc.

6. Any proposal that involves fill placement below the ordinary high water mark of a waterway of the United States (normal summer pool elevation of CE lakes) must comply with guidelines developed pursuant to Section 404 of the Clean Water Act. These guidelines are commonly referred to as the Section 404(b)(1) Guidelines. The law requires that any proposed fill placement must comply with these guidelines before that activity can be approved. The first of these guidelines specifically states that "no discharge of fill material shall be permitted if there is a practicable alternative which would have less adverse impact on the aquatic ecosystem so long as the alternative does not have other significant adverse environmental consequences." In other words, if upland disposal alternatives are available that would provide the applicant with the desired benefits without significant environmental impact, then the fill proposal cannot be permitted according to federal law. Therefore, it is important that alternatives which avoid fill placement below normal summer pool elevation be given thorough consideration in early planning stages.

7. Coordination by Resource Manager. If the Resource Manager reaches a preliminary determination that he will make CE land available for the proposed action and that no practicable upland alternative (including the "no-action" alternative) is available, coordination procedures should be initiated with the following District Office personnel: OP-R, EC-H, EC-G, PM-P, RE-M, OP-F.

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

These individuals or their representatives shall be available to meet with applicants in a pre-application conference. These meetings can provide applicants with important information concerning Clean Water Act requirements, information needed for proper evaluation of fill requests, design suggestions, etc. Whenever possible this pre-application conference should give the applicant an indication of whether the proposal is consistent with project purposes, and the process and time requirements for making a decision on the proposal. If there is little or no chance of approval, the applicant should be so informed to prevent needless expenditures of time and money by the applicant or the government.

8. After initial evaluation and coordination, the Resource Manager will submit a complete proposal with a Report of Availability (or memorandum for fill on easements), Department of the Army (DA) Permit Application if work is proposed below ordinary high water elevations, and Project Outgrant Environmental form to OP-R for processing. The proposal must include plans and cross sections that indicate dimensions, elevations, slopes, erosion controls/stabilization methods, amounts of cut and fill material below top of flood control pool, and exact location on a USGS topographic map. Plans should be submitted on 8-1/2" x 11" bond paper that can be easily reproduced. The CE has the discretion to require the design of cuts or fills on CE fee or flowage easement lands to be certified by a Registered Professional Engineer to ensure slope stability and to minimize erosion and subsequent deposition of sediments in the reservoirs. EC-G and EC-H Branch personnel in the District Office will review these plans for approval. This includes but is not limited to:

- a. Foundation for fills;
- b. Slopes for fills;
- c. Quantities of cuts and fills;
- d. Location of fills and offsetting cuts;

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

- e. Compaction requirements;
- f. Types of materials in cut slopes;
- g. Cut slope geometry; and
- h. Layout of existing and proposed improvements.

9. Coordination within the District Office. RE will determine which CE element(s) receives the application for review/action, depending on whether the proposal involves OP-F and/or RE Division approvals. RE will route copies of proposals by formal memoranda to all involved elements simultaneously. Reviewing elements shall coordinate their responses with the designated lead element. Reviewing elements should also coordinate with RE as early as possible if there are objections or negative comments not raised in the pre-application conference. The lead element will assemble all the DA permit/RE documents and send to the applicant at one time as a single package. No individual element will process and return a final DA permit/RE document without coordinating and assembling all required documents.

10. Proposals that involve regulatory approval and real estate action will be reviewed concurrently by OP-F and RE-M. If both OP-F and RE-M approvals are required, PM-P in coordination with OP-F will prepare and process the appropriate NEPA document to support both decisions. RE-M will be responsible for coordinating with all appropriate elements under these circumstances. When both a DA permit and a real estate instrument are required, they will be sent to the applicant concurrently in accordance with the District standard operating procedure for processing major outgrants.

11. When only a real estate action is required, RE-M will be the lead element and all review comments will be directed accordingly.

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

12. PM-P will be the lead element for proposals planned or initiated by the CE or cost-shared with a local sponsor or other agency.

13. Fill Policy. When the CE acquired various flowage easement estates for Nashville District projects, several restrictions were placed on the owner. These restrictions may include, but are not limited to the following:

a. No structure for human habitation may be built within the flowage easement area without District Commander approval.

b. No structure of any kind may be built without the prior consent of the CE.

The placement of fill constitutes a material interference with the rights obtained in the flowage easement and is considered to be a structure.

14. Generally, no fill will be allowed to be placed below the top of flood control pool or surcharge pool. Also, fill is generally not allowed on flowage easement land below the guide acquisition line. However, it is recognized that there are situations where this requirement may not be in the best public interest. Exceptions to this policy may be granted under the following circumstances:

a. Grounds Maintenance. In some instances where safety and environmental quality are issues, the Resource Manager can approve grounds maintenance by the landowner to fill gullies, depressions, or other eroded landforms that might cause tripping, falling, or other similar type hazards on Government property. The finished grade should be consistent with the surrounding topography and no more than 10 cubic yards of clean fill material may be used.

b. Minor Wildlife Habitat Improvements. Minor wildlife habitat improvement projects can be approved on flowage easements as long as these guidelines are followed:

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

- The proposal does not impound more than three acres and will not exceed six acre-feet (ac-ft) of total storage.
- The area cannot be impounded more than 14 days prior to the duck-hunting season and must be drained no more than 14 days after the end of duck hunting season in the state where the impoundment is located.
- The impoundment berm shall be no greater than 2 feet high.

Flood storage area on Lake Barkley, Cheatham and Old Hickory has been reserved for locating private duck ponds on flowage easement land. 2000 ac-ft of storage has been set aside for private duck ponds on Lake Barkley, 12 ac-ft on Cheatham, and 30 ac-ft on Old Hickory. Currently, approximately 300 ac-ft of storage is being utilized on Lake Barkley for duck ponds. These existing ponds will not be included in the total storage set aside for Lake Barkley. These habitat improvements will require a consent to easement document to be issued by RE and or a DA Permit.

c. Alternate Storage. Exceptions will be considered on a case-by-case basis if alternate storage is provided in a manner consistent with the storage eliminated due to the placement of the fill. The alternate storage volume provided shall be equal to the volume of fill and shall be constructed at an elevation within five (5) feet of the fill. The net result is no loss in project storage. Proposed alternate storage sites must be evaluated for environmental and cultural resources effects prior to approval.

d. Waiver. If alternate storage cannot be provided, then an exception may be considered. Various reasons why alternate storage cannot be provided may be, but are not limited to, insufficient CE real estate, significant archeological and/or environmental impacts, inappropriate terrain, etc. Exceptions may be granted when the fill is to be placed in connection with public roads, public bridges, public mooring structures,

CELRN-EC-H (1165)

SUBJECT: Nashville District Guidelines and Policy for the Review of Cut and Fill Proposals Below Maximum Flood Pool Elevations on Corps of Engineers Lakes and Interests in Lands

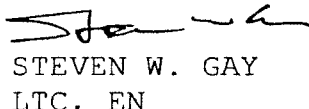
restoration of prior converted wetlands, environmental restoration, utility lines and other structures which are considered to be in the best public interest.

15. National Flood Insurance Program (NFIP) regulations apply to any fill placed in the regulatory floodway as designated by the effective Flood Insurance Rate Maps published by the Federal Emergency Management Agency. The NFIP regulations prohibit the placement of fill in the floodway unless it is shown by engineering analysis that the fill will not cause an increase in water surface elevation of the base flood and floodway. The analysis must compare the existing conditions and proposed conditions using hydraulic modeling techniques similar to those used in the effective flood insurance study. No proposal to place fill in the floodway will be approved unless this "no-impact" analysis is provided.

16. The Chief, RE, with concurrence of the Chief, EC, and the Chief, OP, may recommend exceptions based on the above circumstances. The Chief, RE, may refer controversial or especially significant cases to the District Commander for appropriate action.

17. RE-M, assisted by OP-R, will bring this policy to the attention of all personnel having responsibility for the management of CE lands or interests in lands. They will advise adjacent landowners (who own lands over which the CE has the right to flood by virtue of a flowage easement deed), lessees, and permittees of this policy through news media, personal contacts, and other appropriate means.

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Commanding